IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER,	:	CIVIL ACTION NO. 05-CV-2752
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
LEARN THE SKILLS CORP., et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this ________ day of ______________, 2005, upon consideration of Defendant Paul Ross' Motion to Dismiss, on the grounds of lack of personal jurisdiction and any response and reply thereto, it is hereby ORDERED that said Motion to Dismiss is GRANTED. Plaintiff's Complaint is hereby dismissed, with prejudice as to Ross.

BY THE COURT:

____
Harvey Bartle, III, J.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER,	:	CIVIL ACTION NO. 05-CV-2752
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
LEARN THE SKILLS CORP., et al.,	:	
	:	
Defendants.	:	

DEFENDANT PAUL ROSS' MOTION TO DISMISS

Defendant Paul Ross ("Defendant" or "Ross"), by and through his undersigned counsel, hereby moves this Honorable Court to dismiss Plaintiff's Complaint in accordance with Federal Rule of Civil Procedure 12(b)(2) on the basis of lack of personal jurisdiction over the Defendant.

The grounds for this Motion are more fully set forth in the accompanying memorandum of law, which is incorporated herein by reference. Should this Motion not be granted, Defendant reserves the right to file a subsequent motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6).

BUCHANAN INGERSOLL PC
Respectfully submitted,

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Dated: October 11, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, Plaintiff, v. LEARN THE SKILLS CORP., et al., Defendants.	: : : : : : : : :	CIVIL ACTION NO. 05-CV-2752

BRIEF IN SUPPORT OF
DEFENDANT PAUL ROSS' MOTION TO DISMISS

Defendant Paul Ross ("Defendant" or "Ross"), by and through his undersigned counsel, Buchanan Ingersoll PC, respectfully submits this Brief in Support of Defendant Paul Ross' Motion to Dismiss Plaintiff's Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

I. INTRODUCTION

This case is the latest manifestation of the Plaintiff's addiction to litigation. Plaintiff has commenced not less than seven (7) actions in this court within the past four (4) years, all relating to a similar set of underlying fact, most, if not all, being summarily dismissed. In this latest iteration, Plaintiff is unable to support a contention that the Defendant has sufficient contact with Pennsylvania in order to grant this court personal jurisdiction over the Defendant.

Ross does not have the requisite minimum contacts with the Commonwealth of Pennsylvania to allow this court to exercise personal jurisdiction. Defendant Ross has not purposely availed himself of the jurisdiction of this court by conducting business in Pennsylvania, nor has he ever stepped foot in the Commonwealth.

II. SUMMARY OF FACTUAL BACKGROUND

On June 9, 2005, *pro se* plaintiff Gordon Roy Parker ("Plaintiff") filed a Complaint against Ross, together with several other defendants, alleging, as to Ross, violations pursuant to RICO (Count I), Civil Conspiracy (Count II), Tortious Interference with Business Relations (Count IV), Injurious Falsehood (Count VI), Violation of the Lanham Act (Count VIII), and Invasion of Privacy (Count XI). Plaintiff seeks a recovery of, among other things, $2 billion dollars together with reasonable attorney's fees (the "Complaint").

The allegations in the Complaint, against Ross, stem from online discussions, supposedly, between Ross and the Plaintiff and the advertising and promotion of Ross' business on the internet. Plaintiff contends that he has been prevented from advertising his own products on a specific internet discussion message board, managed by one of the named defendants, Learn The Skills Corp. ("LTSC"). Thus, the Plaintiff alleges that Ross, together with other of the named defendants, conspired to hijack internet traffic though posting links on a free, public access internet message group to LTSC's discussion group, a site to which the Plaintiff was not permitted access. Plaintiff further alleges that other of the named defendants engaged in disparaging comments about the Plaintiff thus culminating in depriving him of business and causing him injury in the amount of $2 billion dollars. See Complaint ¶¶18-24.

III. ARGUMENT

A. The Complaint Should Be Dismissed Because This Court Lacks Personal Jurisdiction Over Mr. Ross

1. The Legal Standard For a Motion to Dismiss

A claim of lack of personal jurisdiction should be raised by a Motion to Dismiss. Federal Rule of Civil Procedure 12(b) . It is the plaintiff's burden to prove the existence of personal jurisdiction. *See Mellon Bank (East) PSFS, N.A. v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992).

A court may consider the allegations in the complaint to be true "unless controverted by the defendant['s] affidavits." *Catalina Mktg. Int'l, Inc. v. Coolsavins.Com Inc.*, Civ. A. No. 00-2447, 2003 WL 21542491, at *1 (N.D. Ill. July 3, 2003). In cases in which there is a federal question, Federal Circuit law controls, however, the law of the state is used to determine whether personal jurisdiction exits over the defendant. *LSI Indus. Inc. v. Hubbell Lighting*, 232 F.3d 1369, 1371 (Fed. Cir. 2000).

2. Legal Standard For Personal Jurisdiction

Federal Rule of Civil Procedure 4(e) allows a district court to exercise personal jurisdiction over defendants not located in the forum state to the extent permitted by the long-arm statute of the forum state. Federal Rule of Civil Procedure 4(e)(1). 42 Pa. C.S.A. § 5322 is the long-arm statute for Pennsylvania. The statute allows a district court sitting in Pennsylvania to exercise personal jurisdiction over a defendant to the fullest extent possible under the due process considerations in the United States Constitution. Thus, the reach of the Pennsylvania long-arm statute is coextent with the Due Process Clause of the Constitution. *George Young Co. v. Bury Brothers, Inc.*, Civ. A. No. 03-3353, 2004 WL 1173129, at *3 (E.D. Pa. Apr. 2, 2003).

There are two types of personal jurisdiction which satisfy due process dictates. A court may exercise personal jurisdiction over a defendant based on the defendant's general or specific contacts with the forum state. *GE v. Deutz AG*, 270 F.3d 144, 150 (3d Cir. 2001). General jurisdiction exists where a defendant has "maintained continuous and systematic contacts with the forum state. *O'Connor v. Sandy Lane Hotel Co., LTD*, Civ. A. No. 04-2436, 2005 WL 994617, at * 1 (E.D. Pa. Apr. 28, 2005). However, specific jurisdiction exists where the plaintiff's cause of action arises from the defendant's more limited forum-related activities. *Vetrotex Certainteed Corp. v. Consol. Fiber Blass Prods. Co.*, 75 F.3d 147, 151 (3d Cir. 1996) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 44 U.S. 286, 297 (1980)). Some Circuits have stated that it is not enough that the cause of action "merely . . . arose out of the general relationship between the parties." Rather, the suit must "arise out of" or "be related to" the defendant's minimum contacts with the forum state. *See RAR, Inc. v. Turner Diesel, Ltd*, 107 F.3d 1272, 1277-1278 (7th Cir. 1997). Thus, for a specific jurisdiction analysis, a court may not "simply aggregate all of the defendant's contacts with the state -- no matter how dissimilar in terms of geography, time, or substance, as evidence of the constitutionally required minimum contacts." *RAR*, 107 F.3d at 1277.

A court will apply a two-part test to determine whether specific jurisdiction exists. *Schiller-Pfeiffer, Inc., v. Country Home Products, Inc.*, Civ. A. No. 04-1444, 2004 WL 2755585, at *3 (E.D. Pa. Dec. 1, 2004). The first consideration is that the defendant have sufficient minimum contacts with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). A district court "may only exercise personal jurisdiction over a defendant who has purposefully established 'minimum contacts' with Pennsylvania or purposely directed his activities toward Pennsylvania residents. *O'Connor v. Sandy Lane Hotel Co., LTD*, Civ.A.No. 04-2436, 2005 WL 994617, at *1 (E.D.Pa. Apr. 28, 2005) *citing Resnick v. Manfredy*, 52 F. Supp.2d 462, 466 (E.D. Pa. 1999).

The second consideration of the Due Process Clause is that subjecting the defendant to the district court's jurisdiction must comport with traditional notions of fair play and substantial justice. *Int'l shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Among the factors that a court may consider in this determination are; 1) the burden on the defendant,; 2) the forum State's interest in adjudicating the dispute; 3) the plaintiff's interest in obtaining convenient and effective relief; 4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies." *Burger King Corp.*, 471 U.S. at 477 (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 292.

Once a jurisdictional challenge has been raised it is the plaintiff's burden to establish that the defendant has "minimum contacts with the forum" such that the defendant could "reasonably anticipate being haled into court there." *Pennzoil Prods. Co. v. Colelli & Assocs.*, 149 F.3d 197, 201 (3d Cir. 1998) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)), *see also, Mellon Bank (East) PSFS, N.A. v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992). The required "minimum contacts must have a basis in 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 109 (1987) (O'Connor, J., plurality opinion) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

A plaintiff can not just rely on bald assertions regarding the defendant's contact with the forum state. *Carteret Sav. Bank v. Shushan*, 954 F.2d 141, 146 (3d Cir. 1992). Rather, a plaintiff is required to present evidence sufficient to establish a prima facie case for the exercise of personal jurisdiction. *Mellon Bank v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992), *Carteret Sav. Bank*, 954 F.2d at 146.

3. The Exercise of Personal Jurisdiction Due to Internet Activity

The internet has presented unique problems regarding the exercise of personal jurisdiction by the courts. The main issues is what level of activity will be considered sufficient minimum contacts to grant a district court jurisdiction over an internet based defendant. The Third Circuit addressed this issue in *Toys "R" US, Inc., v. Step Two*, S.A., 318 F.3d 446 (3d Cir. 2003).

The issue in Toys "R" US was "whether the operation of a commercially interactive web site accessible in the forum state is sufficient to support specific jurisdiction, or whether there must be additional evidence that the defendant has 'purposefully availed' itself of the privilege of engaging in activity in that state." *Toys "R" US, Inc.*, 318 F.3d 446 at 451. In *Toys "R" US* the Third Circuit outlines the requisite analysis in order for a district court to exercise specific personal jurisdiction over an Internet based defendant.

The first consideration is purposeful availment. The mere operation of a commercially interactive internet web site, by itself, does not subject the operator to personal jurisdiction. *See O'Connor v. Sandy Lane Hotel Co., LTD*, Civ. A. No. 04-2436, 2005 WL 994617, at *4 (E.D. Pa. Apr. 28, 2005). However under a purposeful availment analysis, a court must look to see if any facts evidence intentional targeting of the web site to the forum state and/or knowingly conduction of business in the forum state. *Toys "R" US, Inc.*, 318 F.3d 466 at 451. The Third Circuit cited *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997) as the seminal authority regarding personal jurisdiction based on the operation of an internet web site. In *Zippo*, the court found personal jurisdiction proper where the defendant "repeatedly and consciously chose to process Pennsylvania residents' applications and to assign them passwords" the ultimate result being engaging in business relationships with customers in Pennsylvania. *Zippo Mfg. Co.*, 952 F. Supp. 1119 at 1126.

a. Email Communications, By Themselves, Do Not Trigger Personal Jurisdiction

Email communication, and other forms of electronic communication, do not trigger personal jurisdiction unless they show purposeful availment. *Toys "R" US, Inc.*, 318 F.3d 446 at 455, citing *Barrett v. Catacombs Press*, 44 F. Supp.2d 717, 729 (E.D. Pa. 1999) (quoting *Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros., Inc.*, 983 F.2d 551, 556 (3d Cir. 1993)). In *Barrett*, the court found the exchange of emails between the plaintiff and the defendant regarding the contents of the defendant's web site to be insufficient to find the exercise of personal jurisdiction proper. *Barrett*, 44 F. Supp.2d 717 at 729.

Courts in this jurisdiction have consistently held that this level of contact is insufficient to grant personal jurisdiction. *See, e.g. Compagine des Bauxites de Guinea v. Ins. Co. of North America*, 651 F.2d 877, 889 (3d Cir. 1981) (Gibbons, J. concurring in part and dissenting in part) (stating that the mere placing of a phone call by defendant insufficient to grant personal jurisdiction and unilateral actions by the plaintiff, calling, from the forum state, the defendant is also insufficient); *Bucks County Playhouse v. Bradshaw*, 577 F. Supp. 1203, 1209 (E.D. Pa. 1983) (stating that fleeting or fortuitous forum connections, such as a series of telephone calls, lacks the requisite element of intentional invocation of the forum's benefits); (*Sys. Indus., Inc. v. Han*, Civ.A.No. 84-5457, 1987 WL 9144, at *4 (E.D.Pa. Apr. 7, 1987) (Holding that telephone calls, telexes, and mailings to a corporation's office in Pennsylvania in relation to a contract were insufficient to grant personal jurisdiction over the person relaying the communications). *See also Machulsky v. Hall*, 210 F. Supp.2d 531, 542 (D.N.J. 2002) (holding that email correspondence even in conjunction with a single purchase does not, by itself, constitute sufficient minimum contacts to grant jurisdiction over a defendant).

B. The Complaint Should Be Dismissed as to Mr. Ross Because He Does Not Have Sufficient Minimum Contacts with Pennsylvania

Mr. Ross is an individual whose state of residence is California. Ross, has no place of business in Pennsylvania, nor has he at any previous time had a place of business in Pennsylvania. *Ross Aff'd* ¶6. Ross does not own, use or possess any real property in Pennsylvania. *Ross Aff'd* ¶10. Ross does not have any employees, agents or representatives in Pennsylvania. *Ross Aff'd* ¶7. Ross does not target his online advertising to Pennsylvania residents. *Ross Aff'd* ¶24. Ross does not conduct business in Pennsylvania, nor has he ever executed a contract in Pennsylvania. *Ross Aff'd* ¶11. In fact, Ross has never visited Pennsylvania.

Rather, Mr. Ross' business is internet based. The website, www.seduction.com (the "Website") advertising his products is hosted by a third-party entity (the "Third-Party Entity"). *Ross Aff'd* ¶14. Ross does not own, operate or manage the Website. *Ross Aff'd* ¶19. The domain name is not owned by Mr. Ross but is owned by the Third-Party Entity. *Ross Aff'd* ¶18. Ross, however, does have executive control over the substantive content of the website. *Ross Aff'd* ¶20. Ross does not engage in directly selling his products online to customers who order copies of his products over the internet. *Ross Aff'd* ¶25. Orders for Ross' products are processed by the Third-Party Entity. *Ross Aff'd* ¶21. The products are sent from a central processing plant in Texas. *Ross Aff'd* ¶22. Ross has an exclusive agreement with the Third-Party Entity to distribute Ross' English language products throughout the World. *Ross Aff'd* ¶26. Ross does not have an ownership interest in the Third-Party Entity. *Ross Aff'd* ¶15. Ross does not have any controlling interest, or any interest at all, in the Third-Party Entity. *Ross Aff'd* ¶16. Ross does not personally transact any business from the Texas location of the Third-Party Entity. *Ross Aff'd* ¶23. Anyone, in the world, with access to the internet can visit the Website and purchase Ross' materials. Ross has not purposefully availed himself of the privilege of conducting activities within the Commonwealth of Pennsylvania, to invoke the benefits and protections of its laws. Put simply, Ross has no contacts with Pennsylvania.

1. Mr. Ross' Internet Activity Does Not Satisfy Purposeful Availment

The Complaint alleges that Ross has engaged in online discussions with the Plaintiff. But this by itself, is insufficient to grant this court personal jurisdiction over Ross. If the exchange in *Barrett* was found to be insufficient to grant personal jurisdiction, then surely any alleged on going debates between the Plaintiff and the Defendant will be insufficient to grant a finding of personal jurisdiction in this instance.

Plaintiff's Complaint fails to allege sufficient contacts between Ross and Pennsylvania. The Complaint correctly states that Ross resides in California. Complaint ¶4. But it fails to go beyond naming Ross' place of residence in terms of jurisdictional assertions. Furthermore, the Complaint's allegations are based on, among other things, discussion activity on a free, public access internet message group. In addition, the Complaint fails to state how any of the alleged activity relates, in anyway, to the Commonwealth. Thus, due to the lack of credible allegations of contacts between Ross and the Pennsylvania, the Complaint should be dismissed for lack of personal jurisdiction.

2. Subjecting Mr. Ross to Jurisdiction Will Not Comport With Traditional Notions of Fair Play and Substantial Justice

The exercise of jurisdiction over the defendant requires some rational basis. The defendant should be put on notice that he could possibly be sued in the forum state. *See Pennzoil Prods. Co.*, 149 F.3d 197 at 201. In this instance, there is no rational basis for Ross to have known that by engaging in heated discourse over the internet he would be subjecting himself to suit in the local of whomever he was corresponding with at the time. Here, the exercise of personal jurisdiction on that basis would fail due process considerations.

The factors for the courts consideration weigh in Ross' favor. For one, the burden on Ross, should he be required to defend in Pennsylvania, would be great. The costs of commuting back and forth between Pennsylvania and California, to participate in discovery, by itself, is prohibitive. Pennsylvania's interest in protecting its residents from heated discourse over the internet is, to say the least, low. Pennsylvania does not have a vested interest in policing the conversations of its residents to prevent insults and name calling. The Plaintiff's ability to obtain relief is tenuous at best, and does not out weigh the due process considerations of Ross. And finally, the interstate judicial system's interest in obtaining the most efficient resolution of this controversy militates in favor of resolution in a forum that would have jurisdictional powers over the defendant.

IV. CONCLUSION

For the foregoing reasons, Gordon Roy Parker's Complaint should be dismissed as to Paul Ross, due to the fact that Ross is not subject to jurisdiction in Pennsylvania, and in fact has no connections to Pennsylvania. In addition, the Defendant reserves the right to file a motion pursuant to Federal Rule of Civil Procedure 12(b)(6) should the instant motion be denied.

BUCHANAN INGERSOLL PC
Respectfully submitted,

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Attorneys for Defendant Paul J. Ross

Dated: October 11, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2005, I caused the foregoing Defendant Paul Ross' Motion to Dismiss and Memorandum of Law in Support thereof, to be served by first-class U.S. mail, postage prepaid, upon the following:

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